

CHAPTER 2

VIOLATIONS OF THE ANTIDEFICIENCY ACT

A. HOW VIOLATIONS OCCUR. Generally, violations of the Antideficiency Act may occur when:

1. Funding authority is issued in excess of the amount available and the excess amount is obligated or expended.

a. The issuance of funds by means of a formal subdivision of funds (allocation, allotment, suballotment or other formal designation of a limitation) in an amount that exceeds the amount currently available would result in a violation of the Antideficiency Act if those excess funds distributed are actually obligated or expended. The individual authorizing the release of those funds would be responsible for the violation.

b. The issuance of a funded order in excess of available funds may also result in a violation of the Antideficiency Act.

2. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal subdivision of funds level. Incurring an obligation or disbursement in excess of a target (vice a formal subdivision of funds) does not in itself create a violation of the Antideficiency Act. However, if exceeding a target causes the governing formal fund subdivision or limitation to be breached, a potential violation of the Antideficiency Act would be incurred.

3. Special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used are violated.

4. Regulatory limitation on the amounts for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation.

5. Statutory limitations on the purposes for which an appropriation or fund may be used are violated.

6. Regulatory limitation on the purposes for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation and corrective funding is not available.

7. Obligations are authorized or incurred in advance of funds being available.

8. Obligations or expenditures of funds do not provide for a bona fide need of the period of availability of the fund or account and corrective funding is not available.

9. Voluntary services are accepted, or personal services are employed, in excess of that authorized by law.

B. SIGNIFICANT PROVISIONS OF PUBLIC LAW 101-510 AND PUBLIC LAW 102-484

1. General. A DoD employee is at risk of violating the Antideficiency Act under certain provisions of Public Law 101-510 or Public Law 102-484. Public Law 101-510 provides for the cancellation of appropriations after specified periods, extension of the expired status for appropriations from 2 years to 5 years, and elimination of the merged accounts. Section 1004 of Public Law 102-484 allows a currently available appropriation to be charged for obligation adjustments when certain expired appropriations have insufficient obligational authority.

a. A potential violation may occur if the following limitation is exceeded when a currently available appropriation is being charged: the unexpended balance of the canceled appropriation. Paragraph 2, below, provides additional guidance.

b. A potential violation may occur if an obligation is incurred in an expired account for a contract change that exceeds \$4 million in a fiscal year without prior written approval of the Office of the Under Secretary of Defense (Comptroller). In addition, a potential violation may occur if a DoD Component incurs an obligation in an expired account for a contract change that exceeds \$25 million in a fiscal year without requesting approval from the Congress 30 days before the obligation is incurred. Paragraphs 3 and 4, below, provide additional guidance.

c. A potential violation may occur if an obligation is created or authorized against, or an expenditure is made or authorized from, an account that was canceled pursuant to Public Law 101-510.

d. Under section 1004 of Public Law 102-484, DoD Components are required to submit a report of violation to the Congress if currently available appropriations are used for obligations properly chargeable to expired accounts whose availability for new obligations expired during the period FY 1986 through FY 1991 (but have not yet been canceled). A violation also may occur if charges to a currently available appropriation exceed (1) 1 percent of the appropriation of the expired account that has insufficient availability, or (2) 1 percent of the currently available appropriation being charged. Paragraph 5, below, provides additional guidance.

2. Public Law 101-510. Under certain circumstances, a payment that otherwise would be chargeable to a canceled account--both as to purpose and amount--except that the account has been canceled, can be paid from, and charged to, an appropriation that, at the time of the payment, is available for incurring new obligations for the same purpose as the canceled account. However, the total of all such payments charged to a currently available appropriation may not exceed the lesser of:

a. One percent of the total amount originally appropriated to the current appropriation being charged.

- b. The unobligated balance of the currently available appropriation.
- c. The unobligated balance of the canceled appropriation.

3. Contract Changes Exceeding \$4 Million. Under certain circumstances, obligations for contract changes in expired accounts that exceed \$4 million in a fiscal year within a program, project, or activity of an appropriation must be approved by the Office of the Under Secretary of Defense (Comptroller) before being incurred.

4. Contract Changes Exceeding \$25 Million. Under certain circumstances, obligations for contract changes in expired accounts that exceed \$25 million in a fiscal year within a program, project or activity of an appropriation must be submitted to the Congress for at least 30 days prior to being incurred.

5. Section 1004, Public Law 102-484. Section 1004 of Public Law 102-484 permits, in certain circumstances, currently available appropriations to be charged when sufficient obligational authority does not exist in certain expired accounts.

- a. The amount charged to a currently available appropriation may not exceed 1 percent of the appropriation for the currently available account being charged, or 1 percent of the appropriation of the expired account, whichever is less.

- b. A potential violation must be reported and investigated when charges to a currently available appropriation would have resulted in a violation of the Antideficiency Act had they been charged to the applicable expired account.

6. Additional Guidance. Specific guidance on accounting for, and paying amounts otherwise chargeable to, canceled accounts or expired accounts, is available in (a) a Principal Deputy Comptroller memorandum, dated June 13, 1991, subject: “Revised DoD Guidance on Accounting for Expired Accounts, Including ‘M’ and Merged Surplus Accounts”; as modified by (b) a Principal Deputy Comptroller memorandum, dated April 20, 1992, subject: “DoD Accounting Guidance for Contract Changes”; and further modified by (c) an Acting Comptroller memorandum, dated December 4, 1992, subject: “Additional Requirements Associated with Merged, Expired, and Canceled Accounts”; and (d) Volume 3 of this Regulation, upon publication.

C. **CODIFICATION OF THE ANTIDEFICIENCY ACT**. When the “Antideficiency Act” was codified into Title 31 of the United States Code, its provisions were incorporated into a number of sections of that Title. The sections that are most frequently cited are sections 1341, 1342, and 1517. Paragraphs 1 through 3, below, summarize the highlights, and Appendix B contains the full wording, of those three sections of Title 31. Chapter 10 of this volume and Enclosure 2-1 provide examples of the most common types of violations of the Antideficiency Act. Enclosure 2-2 provides examples of actual violations that have occurred.

1. Title 31, United States Code, Section 1341, Limitation on Expending and Obligating Amounts. Section 1341 forbids any officer or employee of the United States from:

a. Obligating, expending, or authorizing the use of funds exceeding the amount available in an appropriation or fund.

b. Involving the Federal Government in any contract or obligation for the payment of money before an appropriation is made available.

c. Obligating, expending, or authorizing of funds required to be sequestered.

d. Involving the Federal Government in any contract or obligation for the payment of money required to be sequestered.

2. Title 31, United States Code, Section 1342, Limitation of Voluntary Services. Section 1342 forbids the acceptance of voluntary services on behalf of the Federal Government, or employment of personal services in excess of that authorized by law, except as it may be necessary in emergencies involving the safety of human life or the protection of property.

3. Title 31, United States Code, Section 1517, Obligation and Expenditure Limits. Section 1517 forbids the overobligation and overexpenditure of an apportionment or an amount permitted by a regulation prescribed for the administrative control of appropriations.

4. Violations Caused by Exceeding Limitations Imposed by Law. Violating a limitation imposed by law (the Congress) may be a violation of the Antideficiency Act under Title 31, United States Code, subsection 1341(a)(1).

5. Violations Caused by Exceeding Limitations Imposed by the Office of Management and Budget, Department of Defense, and DoD Components/Agencies

a. Exceeding a limitation of funds administratively imposed by the Office of Management and Budget, Department of Defense, or a DoD Component, on obligations or expenditures may be a violation of the Antideficiency Act under subsection 1517(a).

b. If an administrative subdivision of funds is exceeded, a potential violation shall be reported. The receipt of additional funds before the end of a reporting period does not mitigate a violation of a limitation or eliminate the reporting requirement for a potential violation. Also, a failure to record a valid obligation or expenditure as of the date incurred does not avoid the incurrance of, and the requirement to report, a potential violation of the Antideficiency Act if, upon recordation, available funds in the account or other limitations are exceeded.